

In The Matter of the
Arbitration of a Dispute
Between

Poweshiek County, Employer)	CEO#1098/Sector 2
)	
and)	Before Arbitrator
)	Sharon A. Gallagher
PPME Local 2003, IUPAP)	Issued: June 15, 2003

Appearances:

For Poweshiek County, Iowa:

Mr. Lou Herrara, Attorney at Law, 1011 Office Park Road, Suite 6, West
Des Moines, Iowa 50265

For PPME Local 2003:

Ms. Deborah Groene, Business Representative/Attorney, Local 2003, P.O.
Box 12248, Des Moines, Iowa 50312

Mr. Dick Williams, International Representative, IUPAT
Mr. Ed Kline, Road Department
Mr. Fritz James, Road Department
Mr. Stanley Houser, Road Department

Arbitration Award

Although the Poweshiek County Secondary Road employees were certified as an independent non-affiliated collective bargaining unit in 1985, that unit was decertified in 1986. In October of 2002, PPME Local 2003 (Union) was certified as the bargaining representative for the same unit originally certified in 1985. Shortly after the 2002 certification, the Union filed a Petition to Amend Bargaining Unit, which the parties settled voluntarily by stipulating on December 20, 2002 to an "amended" unit description. On January 24, 2003 the Iowa PERB certified this Amended Bargaining Unit without changing the unit description.

The bargaining unit consists of thirty Secondary Road Department employees in the following positions: 1/

Utility I	2 employees
Utility II	19 employees
Utility III	4 employees
Mechanic	1 employees
Field Assistant	1 employee
Shop Foreman	2 employees (including Johnston and Krigel)

The parties negotiated for a 2003-04 contract on four occasions; two mediation sessions were held on February 4 and March 12, 2003. No agreement was reached. Pursuant to the PERA Fact-finder Sterling Benz was then selected by the parties and appointed by PERB. Mr. Benz held a Fact-finding hearing on April 10, 2003 and issued his Recommendations on April 24, 2003.

Thereafter, the parties proceeded to arbitration pursuant to Iowa Code Chapter 20. The parties agreed to waive the statutory time limitation for completion of bargaining through June 19, 2003. The Undersigned was jointly selected as arbitrator by the parties from a list furnished by PERB.

By agreement of the parties, the hearing was held on June 4, 2003 at Montezuma, Iowa, beginning at 9:30 AM. No subpoenas were requested by the parties. The hearing was electronically recorded by the Arbitrator. The parties stipulated there was no dispute between them regarding arbitrability or negotiability of the items at impasse.

During the hearing both parties were given full opportunity to present evidence, data, oral presentations, and arguments; they questioned each other regarding exhibits submitted and were given the opportunity to present rebuttal and surrebuttal documents and arguments. All evidence was submitted through Ms. Groene and Mr. Herrera. The parties chose not to submit post-hearing briefs and the hearing was closed at 4:45 PM

Exhibits and Stipulations

The Union submitted Exhibits 1-25 and its large red notebook as well as Rebuttal Exhibits 26-29 without objection.

The County submitted Exhibits 1-47. County Exhibits 1-21 and 23-47 were admitted without objection. The Union objected to County Exhibit 22 (the County's wage proposal) on the ground that it constituted an amended final offer which was not previously put before the Fact-finder, nor was it given to the Union prior to the date of the instant hearing. As such, the Union urged that the Arbitrator could not select the County's wage proposal. The County argued that County Exhibit 22 was merely a clarification, not an amendment, of its wage proposal submitted at Fact-finding.

Arbitration Standard

The Iowa Public Employment Relations Act sets forth criteria to be used by interest arbitrators in formulating awards. Section 20.22(9) of the Act states, in pertinent part:

The panel of arbitrators shall consider, in addition to any other relevant factors, the following factors:

- a. Past collective bargaining contracts between the parties, including the bargaining that led to such contracts.
- b. Comparison of wages, hours, and conditions of employment of the involved public employees with those of other public employees doing comparable work, giving consideration to factors peculiar to the area and the classifications involved.
- c. The interest and welfare of the public, the ability of the public employer to finance economic adjustments and the effect of adjustments on the normal standard of services.
- d. The power of the public employer to levy taxes and appropriate funds for the conduct of its operations.

1999 Iowa Code, Sec. 20.22 (9).

Interest Arbitrators are limited to issuing a decision that incorporates either the position of the Union, the position of the County or the position of the Fact-finder on each separate impasse item:

The submission of the impasse items to the arbitrators shall be limited to those issues that had been considered by the fact-finder and upon which the parties have not reached agreement. With respect to each such item, the arbitration board award shall be restricted to the final offers on each impasse item submitted by the parties to the arbitration board or to the recommendation of the fact-finder on each impasse item.

1999 Iowa Code, Sec. 20.22(3)

Section 20.9 of the Iowa Code lists the mandatory topics of bargaining in Iowa, as well as the statutory "impasse items" as follows: "...wages, hours, vacation, insurance, holidays, leaves of absence, shift differential, overtime compensation, supplemental pay, seniority, transfer procedure, job classifications, health and safety matters,

evaluation procedures, procedures for staff reduction, in-service training and other matters mutually agreed upon." 1999 Iowa Code Sec. 20.9

The parties have six separate impasse items before the Arbitrator: hours, overtime compensation, insurance, holidays, leaves of absence, and wages.

Final Offers

Item 1: Hours of Work and Overtime 2/

1) Union offer on Item 1:

ARTICLE 13 – HOURS OF WORK AND OVERTIME

The purpose of this Article is intended to define the normal hours of work. This Article will not be construed as a guarantee of the hours of work per day or the days of work per week. Determination of the daily and weekly hours of work shall be made by the Employer. The normal workweek shall consist of five (5), eight hour days: Monday, Tuesday, Wednesday, Thursday, and Friday.

The normal workday shall be from 7:30 a.m. to 4:00 p.m. The normal workday includes a thirty (30) minute lunch period.

The Employer will grant, with pay, a fifteen (15) minute rest period in the morning and one (1) fifteen (15) minute rest period in the afternoon.

Any change in the normal workweek will require at least fourteen (14) days advance notice to the employees and the Union.

2) County offer on Item 1

Hours of work and overtime

The purpose of this Article is not to be construed as a guarantee of hours of work or pay per day or hours of work or pay per week. Determination of daily and weekly hours of work shall be determined by the Employer.

3) Fact-finder Benz recommended the Unions offer on this item.

Item 2a: Overtime and Compensatory Time

1) Union offer on Item 2a

Overtime shall be paid for at the rate of time and one-half (1 ½) the employee's hourly rate for hours worked in excess of forty (40) hours in any workweek. Time worked on Saturday and Sunday and holidays shall be considered overtime work. Time worked on Saturday and Sunday shall be paid at one and one-half (1 ½) times the regular hourly rate. All paid time shall count as time worked for purposes of computing overtime. Any overtime work must have the prior authorization of the County Engineer or his designated representative.

The assignment of overtime work shall be distributed as equally as possible, with the employee normally assigned the duties that require overtime work being first called.

Each employee will be asked to indicate his choice of compensation time or overtime pay for compensation credit on his/her time sheet. An employee may accumulate and carry over up to eighty (80) hours of compensatory time. Once an employee reaches 80 hours of compensatory time, overtime will be paid at the rate of time and one-half (1 ½) of the employee's regular hourly rate. The use of compensatory time off must have the prior approval of the Engineer or his designee.

Upon separation of employment, the employee will be paid for his unused accumulated compensation time at the employee's current rate of pay.

3) County offer on Item 2a:

Employees shall earn compensatory time, at the rate of time and one-half (1 ½) the employee's hourly rate for all hours worked in excess of 40 hours per week. Compensatory time off will be approved by the Engineer or his designee.

Each employee will earn compensatory time for compensation credit on his/her time sheet. An employee may accumulate and carry over up to 80 hours of compensatory time.

3) Fact-finder Benz selected the Union's offer on Hours of Work and on Overtime.

Item 2b: Training and Mandatory Meetings

1) Union offer on Item 2b at Arbitration: 3/

Training and Mandatory Meetings. An employee shall be paid, either in cash or compensatory time, at the employee's option, at time and one-half

(1 ½) the employee's hourly rate for all mandatory meetings or training sessions conducted outside of an employee's normal work day or work schedule.

- 2) County offer on Item 2b at Fact-finding:

Training and Mandatory Meetings

Employees shall receive compensatory time at the rate of one and one-half (1 ½) of the employee's hourly rate for all mandatory meetings or training sessions conducted outside of an employee's normal workday or work schedule.

- 3) The Fact-finder recommended the Union's offer quoted above.

Item 3: Insurance

- 1) Union offer on Item 3

Poweshiek County shall continue the hospitalization, major medical, prescription drug and dental insurance program in effect on July 1, 2002, for employees. Premiums for individual employees shall be paid by the County. The County shall pay 100% of the single premium. With respect to dependent insurance premiums, employees will pay the first \$225.00 of dependent coverage and Poweshiek County shall pay the remainder necessary to provide coverage under the program. The monthly amount to be paid by an employee shall be deducted in two installments per month from the employee's paychecks.

Poweshiek County is self-insured. The benefits include, a \$200/\$500 deductible.

Poweshiek County shall subscribe to and pay individual employee premiums for group life insurance in the amount of \$20,000.00 and a \$50,000.00 twenty-four (24) hour accidental death and dismemberment policy.

The Employer retains the right to select the insurance carrier(s). The County shall, however, at any time, have the right to substitute a substantially comparable or better policy as is presently in existence. Prior to any change in the policy or coverage, the employer agrees to notify the Union and give the Union the opportunity to bargain through impasse on any changes

- 2) County offer on Item 3

Insurance – per current County policy with any increase in premiums to be split 50/50.

Employee contributes \$50 toward single premium and employee contributes \$250 for family premium. Maximum out-of-pocket for single \$500, maximum out-of-pocket for family \$1,000. Deductible for single \$200, deductible for family \$500.

- 3) Fact-finder did not recommend either offer. He recommended the following language on this item:

INSURANCE

Poweshiek County shall continue the hospitalization, major medical prescription drug and dental insurance program in effect on July 1, 2002, for employees. An employee selecting single coverage shall pay \$50.00 per month for the cost of that coverage, and an employee selecting dependent coverage shall pay \$250.00 per month for that coverage. The monthly amount to be paid by an employee shall be deducted in two installments per month from the employee's paychecks. Poweshiek County shall pay the remainder necessary to provide coverage under the program.

Poweshiek County is self-insured. The benefits include a \$200/\$500 deductible.

Poweshiek County shall subscribe to and pay individual employee premiums for group life insurance in the amount of \$20,000.00 and a \$50,000.00 twenty-four (24) hour accidental death and dismemberment policy.

The Employer retains the right to select the insurance carrier(s). The County shall, however, at any time, have the right to substitute a substantially comparable or better policy as is presently in existence. Prior to any change in the policy or coverage, the employer agrees to notify the Union and give the Union the opportunity to bargain through impasse on any changes.

Item 4: Holidays

- 1) Union offer on Item 4:

ARTICLE 16 – HOLIDAYS

ADD to this Article as follows:

Work performed on a recognized paid holiday will be paid, in cash or compensatory time, at the employee's option, at time and one-half (1 ½) the employee's hourly rate in addition to the employee's normal wage for the holiday (eight hours).

- 2) County offer on Item 4:

Holidays

An employee who works on a recognized holiday will earn compensatory time at one and one-half (1 ½) of the employee's hourly rate in addition to the employee's normal wage for the holiday (eight hours)

- 3) The Fact-finder recommended the Union's proposal on this item.

Item 5: Sick Leave

- 1) Union offer on Item 5:

ARTICLE 17 – SICK LEAVE

- A) **ADD** to this Article as follows:

After employees have accumulated 120 days of sick leave, they will continue to accumulate sick leave. At the end of the fiscal year, one-half of the accumulated sick leave (in excess of 120 days) will be converted into vacation

- B) **ADD** as the first sentence of the second page of this Article as follows:

Employees may elect to use earned sick leave, compensatory time or vacation as part of the twelve week family leave.

- 2) County offer on Item 5:

Sick Leave

The employer will use earned compensatory time, sick leave or vacation as part of the employee's twelve week family leave.

- 3) The Fact-finder recommended no language be added to the contract concerning
A) conversion of accumulated sick leave to vacation. Regarding B) family leave, the Fact-finder recommended the Union's offer.

Item 6: Wages 4/

1) Union offer on Item 6:

EXHIBIT A – JOB CLASSIFICATIONS AND WAGE RATES

Job Classifications	07-01-02	07-01-03
Utility I	\$14.11	\$14.55
Utility II	\$14.61	\$15.05
Utility III	\$14.71	\$15.05
Mechanic I	\$15.61	\$16.05
Mechanic II	\$15.61	\$16.05
Field Assistant	\$15.84	\$16.28
Field Assistant in training		\$16.05
Shop Foreman		
(Johnston, Bill)	\$16.11	\$16.55
(Kriegel, Jeff)	\$16.36	\$16.80
Transfer Station Superintendent	\$14.91	\$15.35

(The wage rates effective July 1, 2003 are intended to reflect \$0.44 per hour across-the-board [as recommended by the Fact-finder]).

Individuals performing heavy equipment operator duties shall receive an additional \$0.10 per hour for all hours worked for the County.

Individuals performing part-time Mechanic duties shall receive an additional \$0.50 per hour for all hours worked for the County.

Individuals performing painting duties shall receive an additional \$0.60 per hour for all hours worked for the County.

A regular full-time employee, while performing eight (8) hours work on a temporary basis in a higher job classification, shall be compensated at the contractual wage rate for the applicable job classification.

New hires will be classified as Utility I. Starting rate for new hires will be fifty cents (\$0.50) an hour less, while on probation, than the applicable posted rate for the job classification. After a new hire completes the probationary period, he/she will be classified as Utility II and be paid at the Utility II rate of pay.

2) County offer on Item 6:

Poweshiek County Secondary Roads Final Proposal – May 12, 2003

Increase base pay by 2%

Utility Worker I
Utility Worker II
Utility Worker III
Field Assistant
Transfer Station Scale Operator
Utility Worker I Blade Operator
Lead Workers + \$0.20 over and above base pay

At the June 4th hearing the County presented the following "Final Proposal" (County Exhibit 22) regarding the wage item:

<u>Job Classifications</u>	<u>07-01-02</u>	<u>07-01-03</u>
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Increase base pay by 2%

Utility I	\$14.11
Utility II	\$14.61
Utility III	\$14.71
Mechanic I	\$15.61
Mechanic II	\$15.61
Field Assistant	\$15.84
Field Assistant in training	
Shop Foreman	
(Johnston, Bill)	\$16.11
(Kriegel, Jeff)	\$16.36
Transfer Station Superintendent	\$14.91
Lead Workers	+ \$0.20 over and above base pay

The County asserted herein that it was merely clarifying the offer it made at Fact-finding in its "Final Proposal" herein. The Union asserted the change made was substantive and therefore illegal, such that the Arbitrator could not legally select the County's position on this item.

3) Fact-finder recommendation on Item 6:

The Union has adopted the Fact-finder's recommendation on this point, quoted above with the exception of the parenthetical material.

Discussion

A: Comparability Group

The parties have not agreed upon a group of comparable employers applicable in this case. The County argued that the following thirty-one counties across the State of Iowa with populations between 15,000 and 25,000 are comparable to Poweshiek:

Harrison, Bremer, Plymouth, Marion, Jones, Hamilton, Page, Clay, Floyd, O'Brien, Jackson, Butler, Buena Vista, Dickinson, Iowa, Cedar, Delaware, Winneshiek, Mahaska, Hardin, Carroll, Clayton, Henry, Benton, Jefferson, Fayette, Washington, Tama, Kossuth, Buchanan, Crawford.

The Union used the same eight contiguous counties in this case as it had used as comparables in the Fact-finding case: Benton, Iowa, Jasper, Keokuk, Mahaska, Marion, Marshall, and Tama. In this case, the County offered one justification, population, to support its thirty-one-county group. The County also used a smaller list of thirteen comparables ^{5/} to argue that Marshall and Jasper Counties, each with twice the population, twice the budgeted revenues and more than twice the budgeted expenditures for Fiscal Year 2003 should not be used as comparables in this case (County Exhibits 4 and 5). The only other argument the County offered to support its comparability groups was a list of Department Head Wage Salary rates in its smaller thirteen-county comparison group (which also listed data for Marshall and Jasper Counties). The County argued that this evidence supports a conclusion that Marshall and Jasper Counties (that pay their Department Heads from \$6,485 to \$24,571 more than Poweshiek) should not be found comparable here. The County used a third list of six counties, which it argued were comparable, on the insurance and wage items.

In contrast, the Union argued that its eight-county comparable group should be found comparable based on geographic proximity as well as participation in a similar array of industries (farming, post-secondary education and light industry) (Union Exhibit 1). The Union noted that communities in Poweshiek County are so close to Des Moines and Iowa City, Iowa, that taxpayers in Poweshiek County could commute to work in these cities. The Union also noted herein that on a document prepared by the Secondary Road Department Head in January of 2003, the County listed Jasper and Keokuk Counties as "Contract Comparison" counties (Union Exhibit 2). The Union noted that Grinnell, Iowa is located in the County.

In his Award, Fact-finder Benz used both the Union's eight-county comparable group and a truncated six-county comparable list used by the County on the wage and insurance issues: Bremer, Clay, Floyd, Hamilton, Harrison, and Plymouth. In regard to Items 1, 2a & 2b: Hours of Work and Overtime, Item 4: Holidays, and Item 5: Sick Leave (regarding family leave), the County offered Benz no comparability evidence, so Benz applied the Union's eight-county comparability group. Regarding Item 2b: Training and Mandatory Meetings, Benz found only one comparable with a contract provision on this item, Keokuk County.

Based upon the above as well as the fact that the County has adhered to its shorter six-county list in this case, and has offered no direct or specific data concerning the larger, thirty-one-county list on the items before the Arbitrator, there is insufficient record evidence to allow the Arbitrator to use or apply the following counties as comparisons in this case: Buchanan, Buena Vista, Butler, Carroll, Cedar, Clayton, Crawford, Delaware, Dickinson, Fayette, Hardin, Henry, Jackson, Jefferson, Jones, Kossuth, O'Brien, Page, Washington, and Winneshiek. Therefore, data regarding these Counties has not been considered herein.

Turning now to which group of comparables should fairly be applied herein – as between the County's six-county list and the Union's eight-county list, the Arbitrator notes that Poweshiek County is located in the southern one-half of Iowa; it is bordered on the north by Interstate 80; it is located approximately half-way between Iowa City and Des Moines; Grinnel College, a top-ranked liberal arts college, is located in Poweshiek County. The evidence of record shows that Clay, Plymouth, and Harrison Counties are in the far western one-third of the State, while Floyd, Hamilton, and Bremer are in the northern one-half of the State, and are distant from Poweshiek. None of these counties is contiguous to Poweshiek; none lies close to Des Moines or Iowa City; none is bordered by Interstate 80.

In contrast, all of the Union's eight comparables are contiguous to Poweshiek County, essentially surrounding it on all sides. This fact makes it more likely that individuals living in these counties share similar buying power, common labor markets, and educational opportunities, accessible to them by a relatively short commute. The Arbitrator notes that the average number of square miles of the Union's eight-county group is 628, while the average area of the County's six-county group is 607 (County Exhibit 3). The Arbitrator does not find this to be a significant difference. Although the average population of the Union's group is 25,174 and the average population of the County's group is 19,092, the Arbitrator does not find this difference significant either. The Arbitrator notes that in Marion County the Secondary Roads Unit is not unionized, yet the Union left this County in its eight-county group.

The County has argued that its six-county group is reasonable, based on similar population, Department Head pay, 6/ and similar budgeted revenues and expenditures. Given the lack of specific and consistent comparability of evidence submitted by the County (it having used a thirty-one-county group, a thirteen-county group on comparability, and a six-county group on wages and insurance during the proceeding), given the County's failure to offer any comparison data on Items 1, 2, 4, and 5, and given the Union's consistent application of its eight-county group on each item before this Arbitrator, the Arbitrator finds the Union's eight-county comparability group should reasonably be applied to this case.

B. Ability to Pay

The County has argued herein that it lacks the ability to pay for the Union's offered economic items based upon the following evidence:

- 1) The County's General Fund balance has declined from \$865,621 in Fiscal Year 2001, to \$501,460 at the end of Fiscal Year 2002.
- 2) The County has eliminated four non-unit positions, and it has under-funded its self-funded family plan insurance program by \$200 per month per employee; it has cut \$75,000 for Sheriff Department replacement vehicles, and has reduced the jail budget by \$50,000, for a total reduction in the General Basic Fund of \$202,000 (County Exhibit 7).
- 3) The County borrowed \$150,000 in Fiscal Year 2001 and \$100,000 in Fiscal Year 2002 to help fund its self-funded insurance program.
- 4) The Iowa legislature has passed a bill that would cut revenues to the County by \$172,160 for 2003-04 (County Exhibits 10 and 11).
- 5) The County's Rural Services Fund ending balance has declined from \$697,621 in Fiscal Year 2001 to \$436,970 in Fiscal Year 2002.
- 6) The State auditor stated in a summary of his audit report that "...the significant increase in expenditures is due primarily to secondary roads roadway maintenance and equipment operation." (County Exhibit 7).
- 7) The County will experience a reduction in revenues from Fiscal Year 2000 to the proposed Fiscal Year 2004 budget of \$2.1 million.
- 8) The County's Workers' Compensation premiums for Fiscal Year 2004 are expected to increase by \$31,000.

Fact-finder Benz found the following regarding the County's ability to fund the Union's offer:

At first glance, the Board's budget decisions and the appeal of the overall budget would seem to effectively diminish the importance of the other factors set forth in Section 20.22 (9) of the Code, such as comparisons of wages, hours and conditions of employment of other public employees doing comparable work. Absent some kind of an adjustment in the services provided by the secondary road department, the money to pay for economic items proposed by the Union would not be available. However, Poweshiek County has not levied the statutory maximum rate for either the general fund or the rural services fund, which are two funds from which the secondary road fund receives its revenues.

Under Section 331.435 of the Code, the County "...may amend the adopted county budget...to permit increases in any class of proposed expenditures contained in the budget summary published under Section 331.434, Subsection 3...and the amendment is subject to protest as provided in section 331.436...." The amendment of the County's budget would have to be completed by May 31, 2003. Thus, although the matter is complicated by prior budget decisions of the Board of Supervisors and the taxpayers' appeal of the County's budget, it does not appear to this Fact-finder that the County is without the authority to fund either of the proposals on the overtime impasse item or the other impasse items in this matter which have economic consequences. 6/

The Union has argued that the County is below the maximum levies allowed by the Iowa Code, (Section 331.423) in both the General Basic Fund, and Rural Services Basic Fund, and that only if the County is at the maximum allowable levies in the General Basic and Rural Services Funds may the County levy for specific expenditures such as Unemployment Compensation, IPERS and insurance necessary to operate the County, including Workers' Compensation, tort liability, and self-insurance programs. Here, Poweshiek has levied at a rate of \$3.236 per thousand dollars of assessed valuation in the General Basic Fund and \$2.338 per thousand dollars of assessed valuation for the Rural Services Fund for the relevant period. Section 331.423 of the Iowa Code states the allowable maximums as \$3.50 per thousand for County General Funds and \$3.95 per thousand for County Rural Services Funds. Thus, the Union contended that even after the County's tax asking was approved by the State Appeals Board in 2003, a County taxpayer owning a house assessed at \$200,000 would get a \$55/year increase in his or her property taxes.

This Arbitrator notes initially, that the County submitted no evidence to show that it had had to borrow to fund its self-funded insurance program either in Fiscal Year 2002 or in Fiscal Year 2003. The fact that the County borrowed \$100,000 from a third party in Fiscal Year 2000, and another \$150,000 in Fiscal Year 2001 from its own General Fund to fund the insurance program has exacerbated the decline in the County's General Fund balance. In addition, it is unclear from the County's evidence what the actual insurance premiums will be in Fiscal Year 2004. In this regard, this Arbitrator notes that the County Exhibit 8 states that no firm data is available at the time of the instant hearing on this point.

In regard to the County's borrowing in 2001 and 2002 to support its self-funded insurance program, the Undersigned notes that the County has under-funded the program by \$200 per month (against the advice of its TPA) for each of thirty-seven family plans in the County; that County Assessor's Office employees have not been required to pay the single plan \$50 per month premium increase that all other County employees have paid since July 1, 2002; that the County passed 100% of the increase in its health costs onto unit employees as of July 1, 2002; and that the County did not require its retirees (who receive single health coverage) to pay the \$50 premium increase passed onto County employees. These facts significantly detract from and diminish the County's ability-to-pay arguments. It was also undisputed that three employees retired from the bargaining

unit, and one was terminated prior to the instant hearing. None was replaced, saving the County money. The County's offer also increased out-of-pocket costs for employees. The county offered no comparables to show that other counties split insurance increases 50/50 with their employees. The fact that the County's offer is "per County policy" would indicate that the plan could change whenever the policy is changed. These provisions weigh against the County's offer where as her no comparables have been offered thereon.

The County submitted several news articles regarding financial problems extant in Iowa (County Exhibits 11, 17, and 18). However, the County provided no specific evidence to demonstrate how these articles apply to Poweshiek County. As discussed *infra*, the County's private sector arguments are also unpersuasive.

Therefore, the Undersigned is persuaded that the County's inability to pay argument must fail in this case. This conclusion is based upon the record evidence that the County is not at maximum levy limits, the record evidence herein, and Mr. Benz' findings, as well as the above analysis.

Item 1: Hours of Work and Overtime

On this Hours of Work item, the County failed to offer any comparability data in support of its offer and it submitted no exhibits on this item. The County's offer would give the County complete discretion to set the starting and ending hours for any and all work days (including weekend days) without prior notice to employees. This Arbitrator agrees with the Union on this point, that the County's language would allow the County to send employees home before the end of a normal eight-hour workday without triggering the layoff or staff reduction language of the contract. Under questioning by the Union herein, County Counsel Herrera affirmed that the County's language could have the effect urged by the Union, and although the County has no intention of sending employees home early, the County would want that flexibility if its financial condition called for such action. In addition, under the County's offer, the County could also create night shifts, split shifts, or seasonal flex shifts without giving any prior notice to employees or the Union.

The Fact-finder made the following findings regarding the evidence on this item placed before him:

Prior to July 1, 2001, employees in the Poweshiek secondary road department received overtime compensation for time worked in excess of forty hours in the workweek. Additionally, they were compensated at an overtime rate if they were required to work on a weekend...Whether that compensation was in the form of time off or cash is not clear. One of the employees in the road department indicated at the hearing, except for the FY 2001-02, employees received time off. Other employees of the department at the hearing indicated in the past employees could elect compensatory time or cash payment. During one fiscal year, that being 2001-2002, employees received overtime compensation for hours worked

in excess of eight hours in a work day. Prior to certification of the bargaining unit in 2002, the Board of Supervisors changed the policy to one which compensated at overtime rates for hours worked in excess of forty hours in a workweek.

Mr. Benz also made the following findings regarding the Union's comparables on this item.

In reviewing the 2002-2003 secondary road contracts in Benton, Iowa, Jasper, Keokuk, Mahaska, Marshall, and Tama Counties, the undersigned finds the Union's overtime proposal is generally in accord with those contracts, with the exceptions noted hereafter 6/ The undersigned finds the contracts in Benton County and Keokuk County do not specify the days of their workweek. While the Iowa County contract specifies the working days start on Monday and end on Friday, it also permits change of those days upon two-weeks prior, written notice to the Union. The Keokuk County and Marshall county contracts do not specify the stating or ending times of the workday. The Tama County contract specifies the normal workday starts at 7:00 A.M. and ends at 3:30 P.M., but reserves the employer's right to adjust the starting and quitting times "...to make seasonal demands...." The Benton County, Iowa County, and Keokuk county contracts while providing for a morning rest period and afternoon rest period, do not specify the exact times of those breaks. The Mahaska County contract does not appear to provide for rest periods.

6/ Only the Keokuk County contract contains language, similar to that proposed by the County herein, stating the article on hours of work and overtime "...shall not be construed as a guarantee of...pay per day or...pay per week...."

In the instant case, the Union did not advise the Arbitrator of any substantive changes in its eight-county group on this or any of the items in dispute. In this case, two employees stated that for at least the past thirteen to fourteen years, the normal workday in this unit has been 7:30 AM to 4:00 PM from Monday through Friday. No evidence was submitted herein regarding lunch and break times granted to unit employees in the past.

The County has failed to provide any evidence to show the cost of this item, or its effect on services. Although the comparables on this item are mixed, the negative effect on employees of selecting the County's offer far outweighs any problems the County may have by selection of the Union's offer. Therefore, based upon the analysis above as well as the record evidence and the Fact-finder's findings, this Arbitrator finds that the parties' past history, as well as the interests and welfare of the public demonstrate that the Union's final offer (the Fact-finder's recommendation) is the most reasonable and it is selected on this item.

Item 2: Hours of Work and Overtime (b)

Regarding this overtime/compensatory time item, this Arbitrator notes that the County failed to submit any comparables in support of its offer and it submitted no

exhibits on this point. The only evidence offered by the County herein on this item came in the form of questions by the County of Union Counsel Groene concerning how the Union's proposal was intended to work. The County's main argument in this point was that the County would be liable to pay overtime in cash, a cost difficult to estimate and plan for, and that this could exacerbate the County's financial problems. The Union responded that as it has offered herein Mr. Benz' recommendation (which includes an accrual cap of 80 hours), this should give the County greater control over costs and relief from immediate cash payments, as the Union offer on this item doubles the forty-hour accrual cap applied by the County for at least the past four years. 7/

In his Fact-finding award, Mr. Benz discussed the comparables on this item as follows:

In reviewing the contracts of the seven counties offered by the Union for comparison, the undersigned does not find a provision in the Tama County contract which requires paid leave to be counted as part of hours worked in computing overtime. The contracts of the other counties, provided by the Union, in one form or another, do. However, the Mahaska County contract counts only holidays and vacation time as working time for purposes of determining overtime, and the Marshall County contract provides "...sick leave does not count as time worked toward the computation of overtime..."

The undersigned further finds the Iowa County contract does not provide for compensation of overtime after eight hours worked. Although the Union's representative indicated, at the hearing in this matter, the Jasper County contract provides for compensation of overtime after eight hours of work, it appears to this Fact-finder the said contract does not provide for compensatory time or overtime payment until employee has worked "...in excess of forty (40) hours in any workweek..."

With respect to the Union's proposal that work on Saturdays or Sundays shall be considered as overtime work, the undersigned finds the Iowa County, Jasper County, Keokuk County and Mahaska County contracts do not so provide, at least not explicitly 7/

Finally, the Undersigned notes the Marshall County contract states "...after earning forty (40) compensated hours work..." in the winter season "...an employee may be sent home and placed in non-pay status for the balance of said workweek...."

7/ The Iowa County and Jasper County contracts may do so implicitly by virtue of provisions which indicate the "normal" workweek is Monday through Friday and which requires two weeks' notice to the Union of changes.

The Union submitted several exhibits in this case, (Union Exhibits 3-6) which summarized Overtime and Compensatory Time eligibility, what type of payment is made, and how and when compensatory time can be scheduled and used among its eight-county

comparable group: six of these counties pay overtime after eight hours worked in a day while two counties pay overtime after forty hours in a week; all eight counties count all paid leaves for purposes of computing overtime.

In regard to how overtime is paid or credited among the Union's eight-county group, six counties either pay cash, or grant compensatory time or overtime pay at the employee's option; two counties pay cash only. None of the eight counties require employees to earn compensatory time with no employee choice, as is required by Poweshiek County's offer. Regarding who decides when compensatory time can be used, two counties of the Union's eight-county group require cash payment for overtime, five allow the employee to schedule compensatory time subject to employer approval and one county (Iowa) allows the employer to schedule up to two days of compensatory time for the employee, all hours to be scheduled with mutual agreement of the employer and the employee.

The Union also noted that Section 553.23(a) of the Code of Federal Regulations concerning the FSLA requires employers and non-represented employees to reach an agreement or understanding before work is performed that compensatory time will be earned in lieu of overtime payment in cash; absent such agreement, overtime must be paid (Union Exhibit 6)

The County sought to put before this Arbitrator Fact-finder Michelstetter's Award in the County Sheriff's Department on overtime and compensatory time. However, Iowa Code Section 20.22(3) does not allow such an approach, as neither the Union nor the County has used this provision as an offer at fact-finding.

Based upon the evidence submitted herein, this Arbitrator's previous conclusions on comparability and ability to pay, and given the County's failure to submit any comparables on or costing of this item or any evidence to show how the Union's offer would affect services, the Undersigned finds the Union's offer on this item is the most reasonable, and it is awarded herein.

There is a second point involved in this overtime item; Training and Mandatory Meetings. At the Fact-finding hearing only the County had a proposal on this point; the Union had no proposal on this item. However, "...the Union had no disagreement with the County's proposal except that it desired employees to be compensated at the time and one-half rate, in cash or compensatory time, at the option of the affected employees, for such meetings or training sessions." (Benz Award)

Mr. Benz made the following findings on this point:

The evidence presented by the parties, specific to this issue, can be, at best, characterized as minimal. The only evidence the undersigned could find relevant to the proposal is contained in the current Keokuk County contract, which provides in its "Hours of Work and Overtime" Article:

...Training and travel time is hours worked. Any hours over eight (8) hours is paid at one and one-half (1 ½) times the employees regular hourly rate.

Similar to the record on the holiday item, the specific record made on this training item contains no historical evidence and no evidence relating directly to the County's ability to pay the cost of training or meetings outside of employees normal workday.

Mr. Benz recommended what has become the Union's language before this Arbitrator in this case and observed as follows:

The undersigned is of the opinion the consistency of this recommendation with those made on overtime and holidays will make administration of the contract simpler for the parties. Further, the provision for payment in cash is consistent with the provision in the only other contract made part of the record which specifically addresses the subject. The undersigned would anticipate the County will be able to control its costs relating to this item, in that it will make the decision as to when training and meetings will be held and who and how many will attend.

The Undersigned concurs with Mr. Benz on this item, the County having provided no comparables on this issue or any exhibits thereon to show what this item would cost or how it would affect services. The Union and Fact-finder's shared position is therefore the most reasonable and is awarded herein.

Item 3: Insurance

This issue is of major importance to the parties. This is one of two items herein on which the County supplied comparability data. The County used both its thirteen-county list and its six-county list (Harrison, Bremer, Plymouth, Hamilton, 8/ Floyd, and Clay). Several of the County exhibits on this item were identical to those it included in the County's "Financial Condition" portion of its exhibit book: Exhibits 14 and 31 and Exhibits 16 and 30.

Regarding this item, the County argued herein that there is a health insurance crisis across Iowa and the trend is for employees to pay more of the increasing costs of this benefit. The County used the same exhibit in this case (County Exhibit 29) as is quoted by Mr. Benz in his award regarding employee contributions to health insurance. That exhibit showed that employees on average contribute \$38.38 to single average and an average of \$140.32 in the County's six-county comparability group. The County offered no comparison evidence regarding deductibles.

The County submitted evidence regarding a thirteen-county group ^{9/} to show the employee cost of single/family coverage. Eight of twelve counties (more than half) used had a \$0.00 employee contribution to single premiums while the four remaining counties had an average single plan employee premium contribution of \$66.11 per month. Regarding the employee cost of family coverage, three of the County's twelve-county group had a \$0.00 contribution, while the average family plan employee contribution in the remaining nine counties was \$183.72, \$66.28 less than County family plan employees now pay.

The County also submitted a David P. Lind & Associates survey of private sector employees showing that in 2002 premium increases were on average 92% (County Exhibit 32); that in private sector firms the average deductible for a single premium plan is \$384 (compared to \$200 at the County) while the family health plan deductible in the private sector is on average \$823 compared to the County's family deductible of \$500; that the single/family private sector out-of-pocket payment for a year is on average \$1284 for single coverage and \$2654, compared to the County's proposed OOP costs of \$500 and \$1,000 for single and family insurance, respectively. The County also submitted a Lind & Associates document which showed that in the private sector from 2002 to (proposed) 2003, 10.1% more companies and employees would share increased insurance costs; 18.8% of companies reduced benefits to minimize or eliminate costs; 8.4% fewer companies intended to absorb all insurance increase in 2003 than did in 2002; 21.6% more companies intended to change insurance companies than did so in 2002; 7.1% more companies intended to pass all increases on to employees in 2003 than did in 2002; and 3% more companies intended to cease offering health coverage in 2003 than had done so in 2002.

In contrast, the Union submitted herein comparability evidence using its eight contiguous county group which showed that none of the Union's eight comparables required employees to pay any part of the single premiums in 2002, making Poweshiek the only county in the region that requires employees covered by a single plan to contribute (\$50.00 per month in Poweshiek) to their insurance. ^{10/}

Regarding the family plan deductibles among the Union's eight-county group, the average deductible in 2002 was \$101.34, compared to \$250.00 per month paid by County employees on the family plan since July of 2002. The Union argued that this difference represented an \$0.85 per hour cost to County employees in 2002. If the Undersigned were to select the Union's offer in 2003, it would return County single plan employees to the average of the Union's comparables (\$0.00) in premium payments, but it would require County family plan employees to pay \$111 more than the average of the Union's comparables.

In regard to insurance deductibles, the Union provided evidence to show that 75% of its eight-county group had deductibles of \$100 or less for single coverage and \$200 or less for family coverage. The Union noted herein that it has offered the \$200/\$500 deductible recommended by Mr. Benz even though County deductibles are currently substantially higher than all other counties in the Union's eight-county group except for

Marion (at \$200/\$400), which is non-union, and Marshall, at \$250/\$500. The Union also noted that the cost of prescriptions will increase and there may be an employee loss because the County has opted out of several requirements because it is self-insured (Union Exhibits 8 and 9).

The Union and the County presented exhibits herein to show the hourly benefit cost of insurance in the Union's eight-county group and in the County's twelve-county group, respectively. Among the Union's eight-county group the average wage for Patrol Operator was \$15.48 per hour; the average employer insurance contribution per hour per employee was \$3.81. Hence, the total average employer contribution per hour per employee was \$19.29. Thus, the Union argued that Poweshiek was \$0.87 behind the comparables in wages and \$1.36 behind the comparables in employer insurance contributions, making Poweshiek County's hourly contribution per-employee \$2.23 less than the Union's comparable counties (Union Exhibit 14).

The County's exhibit compared various wage rates, the hourly cost of single and family insurance benefits as well as the total of the two for its twelve-county comparable group (County Exhibits 37-40). These exhibits showed that the single/family hourly employer paid benefit cost for this group (including Poweshiek) was \$2.18 and \$4.14 per hour, respectively. The parties offered no evidence in this case to explain the difference between their costing of the hourly cost of insurance benefits in the County.

This Arbitrator notes that even under the County's six-county comparable group, the average employee payment is \$140.32 per month on the family plan; or \$84.68 less than County employees would pay under the Union's offer, \$0.488 per hour. In addition, the County's evidence showed that three of its six-county group (50%) require no employee contribution to single premiums. This Arbitrator notes that a \$50.00 per month employee contribution to the County's single health plan is worth \$0.288 per hour to County employees.

It is the opinion of this Arbitrator, that this evidence shows that under either set of comparables, County employees are paying substantially more for premiums than their public sector counterparts. In addition, the Undersigned finds the County's private sector evidence unpersuasive. Section 20.22(9) of the Iowa Code specifically refers to "public sector employees doing comparable work" and makes no specific reference to comparison between public and private sector employees. Furthermore, the evidence provided by the County was general and non-specific to private sector employees who perform work similar to Secondary Road employees. The County also provided no evidence regarding private sector pay rates or whether any of the firms surveyed were unionized. Based on the above analysis as well as Mr. Benz' observations on this point, this Arbitrator concludes that the Lind & Associates exhibits cannot fairly be considered herein even in the "other relevant factors" category.

Mr. Benz observed the following regarding his recommendation on the insurance item:

Prior to July 1, 2002, the Poweshiek County health insurance plan provided for deductibles of \$100.00 per covered person and \$200.00 per family. Prior to that date, employees were not required to pay the deductible for inpatient hospitalisation, outpatient surgery, routine procedures in a doctor's office, outpatient diagnostic x-ray and lab services and anaesthesia. After that date, the deductibles applied to all of the said services and procedures. Prior to July 1, 2002, the out-of-pocket maximums under Poweshiek County plan were \$500.00 per covered person and \$600.00 per family.

Poweshiek County's insurance benefits are provided pursuant to a self-funded plan. The current fixed costs per month of the plan (premium and administration fees) are \$108.19 (single) and \$187.85 (family). The current claims exposure per month of the plan is \$387.66 (single) and \$676.75 (family). The various components of the 2002-2003 fixed costs and claims exposure are shown as follows.

Fixed Costs	Single	Family
Specific Risk	\$69.45	\$149.11
Aggregate Premium	8.66	8.66
Medical Administration	11.47	11.47
Utilization Review	2.00	2.00
RX Program	1.50	1.50
PPO	4.85	4.85
Conversion	0.85	0.85
Dental Administration	2.25	2.25
New York HC Surcharge	0.11	0.11
Vision Fixed	0.75	0.75
Life	6.30	6.30
TOTAL FIXED	\$108.19	\$187.85
Claims	Single	Family
Aggregate risk (medical)	\$366.00	\$642.00
Dental	\$15.26	\$34.75
Vision	\$6.40	
TOTAL CLAIMS	\$387.66	\$676.75
TOTAL FIXED + CLAIMS	\$495.85	\$864.60

This Arbitrator notes that the evidence of fixed costs and claims before Mr. Benz was somewhat different from that submitted herein (Union Exhibit 10; County Exhibit 15). Benz noted that the balance (as of June 30, 2002) in the County's self-funded plan after payment of Claims and provision for reserve was made for incurred but unpaid Claims was \$36,429.21. It is also significant that no fixed insurance premium costs for

Fiscal Year 2004 were available to Mr. Benz or in this Interest Arbitration case, and that the County could only estimate a 20-30% increase in premiums (even though the County plan is self-funded) in both cases.

Mr. Benz priced the \$50.00/month per employee premium increase (\$18,600 per year for 31 unit employees) the Union proposed to recoup in its offer, returning to pre-July 1, 2002 benefit levels, against the Union. In fairness, the Undersigned does not believe these amounts should have been priced against the Union given the underlying facts. Significantly, no comparables among the Union's eight-county group (which this Arbitrator has found appropriate for comparison) require single plan employees to pay monthly premiums, and 66% of the County's comparables do not require employees to pay a single plan premium. The findings of Mr. Benz and those of this Arbitrator, that all County employees already pay more for deductibles and premiums than comparable employees, selection of the Union's offer on this item is most reasonable.

It is also significant that the County passed on 100% of the increase in insurance costs to County unit employees in July of 20002, yet County Assessor employees were exempted from such payments, as were retired county employees (the latter receive 100% County paid single insurance). Although the County will have to pay more toward insurance, County employee wages, already well below the norm, will not be eroded further *vis a vis* the comparables.

Union Exhibit 8 tellingly demonstrated the effect on unit employee wages, if the County's offer were selected, as follows:

**ECONOMIC IMPACT OF JULY 2002 REDUCTIONS IN
EMPLOYEE BENEFITS**

Wage Increase	\$0.29 per hour
\$50/month increase in EE contribution to insurance	- \$0.28 per hour
\$300 increased deductible exposure for family insurance	- \$0.14 per hour
\$400 increase out-of-pocket max exposure for family insurance	- \$0.19 per hour
Loss of 100% coverage for several services	?
Increased cost of prescriptions	?
Loss of Sick Leave-Wellness Plan	<u>- \$0.34 per hour</u>

TOTAL MEASURABLE LOSS

- \$0.66 per hour

Under the Fact-finder's recommendations, County employees would experience no wage increase due to their increased payments for insurance. Although Mr. Benz found the Union's insurance offer in his case would be "excessive" and "unreasonable," requiring a 34% or 44% increase in County contributions for single and family coverage respectively, he also found that to award the County's offer at Fact-finding would put County employees "even farther from the norm," which would not be reasonable in view of the comparison evidence in wages. Mr. Benz also found that the County was likely not fully funding for potential claims to the plan.

In all of the circumstances of this case, and given that the County employees will still be paying more toward family premiums than the average of even the County's comparables, that employees in the eight contiguous counties pay nothing toward single premiums, that the County has the ability to meet specific insurance expenses (as it is below both the admissible General Fund and Rural Basic levy limits), and given that the County substantially changed employee insurance benefits in July of 2002, this Arbitrator concludes that the Union's offer herein is the most reasonable on the insurance item. It is therefore awarded.

Item 4: Holidays

On this item, the Union offered the Fact-finder's recommendation herein. The County presented no comparison evidence on this point here or in the Fact-finding case. Fact-finder Benz made the following findings on this item:

In Iowa, Jasper, Keokuk, Mahaska, Marion, Marshall and Tama Counties, secondary road employees are currently paid for work performed on holidays. In Benton County, the secondary road employees currently have the option of being paid for such time worked, or receiving time off. In all of these counties, except Jasper, the rate of compensation mirrors that proposed by both parties to this impasse. In Jasper County, it appears secondary road employees are paid "...two (2) times their hourly rate of pay..." in addition to "...their normal daily pay...."

In the record made by the parties, the undersigned finds no historical evidence regarding this item and no evidence relating to the County's ability to pay separate or distinct from that presented on the overtime impasse item, which evidence has already been discussed herein.

In addition, Mr. Benz stated his reasons for selecting the Union's language (offered here) on this item:

[The Union] is comparable in its provision to those contained in the contracts of the adjoining counties. The overtime recommendation of the undersigned specified "...time worked on holidays shall be considered

overtime...." That recommendation further specifies "...any overtime work must have the prior authorization of the County Engineer or his [or her] designated representative...." With that, the undersigned is of the judgment [that] costs associated with this item can be controlled by the County.

In the instant case, the Union offered Exhibit 17 which showed that 100% of the Union's eight-county group pay cash to employees at least at one and one-half (1 ½) pay for all hours worked plus regular pay for the holiday. None of the Union's eight-county comparables (the only ones submitted hereon) requires employees to receive compensatory time at straight time plus normal wages for holidays. The County's response herein to the Union's arguments is that the County needs to avoid having to pay more for holidays, and that it needs flexibility to meet its financial needs in the future.

Based upon the limited record herein, the Undersigned believes the Fact-finder's recommendation (and, consequently, the Union's) to be most reasonable, and this Arbitrator selects it herein. The Undersigned notes that the parties submitted no evidence regarding their historical approach to this issue and the County submitted no specific evidence regarding the County's ability to pay or the cost of this item.

Item 5: Sick Leave

There are two items at issue here. At Fact-finding, the Union offered to allow employees to accumulate sick leave beyond 120 days and to convert accumulated sick leave in excess of 120 days to vacation. The County made no offer on this issue. The Union's offer was not selected by Mr. Benz. The other issue at Fact-finding covered by this item was whether sick leave, vacation, and compensatory time could be used for family-leave purposes. The Fact-finder did not recommend the Union's proposal on this issue. Nor did he recommend the County's offer on this issue. The Union has offered the same proposal herein that was rejected by Mr. Benz on sick leave conversion and has adopted Mr. Benz' recommendation on family leave. The County offered the same provision herein on family leave as it did before Mr. Benz.

Regarding the first issue, the Union submitted Exhibit 18 regarding the eight-county comparable group which read, in part as follows regarding the sick leave conversion offer:

BENTON If employee has over 100 days, may convert 1.25 days of sick to 2 hours of vacation. (4 days sick = 1 day vacation).

IOWA Employee paid up to 60 days on separation of employment.

JASPER If no use of sick leave in ¼ of year (i.e., Jan-Mar) receive 1 bonus day off. At retirement, paid for all hours in excess of 180 days.

- KEOKUK** At retirement with 15 years of service, convert 25% of accumulation to cash value for the payment of health or life insurance premiums
- MAHASKA** Paid 50% of days over 80 day accumulation each year (max of 6 days per year). Employees can use 2 of the 6 days as vacation days.
- MARION** Each July employees are paid for 50% of accumulation over 90 days if no sick leave use that previous year (max 9 days). At retirement, convert 50% of accumulation to cash value for payment of health insurance premiums.
- MARSHALL** After 135 days accumulation, can convert 12.5 days to one day of vacation. At retirement, paid for 1 day for each 12.5 days over 135 days.
- TAMA** After 100 day maximum accumulation is met, continue to accrue at 2 hours per month in a separate account for payment of health insurance premiums.

Mr. Benz made the following findings regarding the Union's sick leave conversion proposal and noted that neither party provided evidence of the potential cost of this item:

There are two separate proposals pertaining to sick leave in this matter. The Union proposes the following:

An employee who does not use sick leave during a calendar month shall earn an additional ½ day (4 hours) of vacation per month.

The County, at the time of the hearing, had no written proposal responsive to the foregoing Union proposal. The County representative, however, submitted the Union's proposal was an illegal subject of bargaining. The County's representative advised the undersigned the County would file a petition for resolution of the negotiability dispute with the Iowa Public Employment Relations Board. At the time of this Report, the undersigned had received no order of stay from the board and, therefore, proceeds with the undersigned's recommendation regarding the proposal.

The Union made clear to the undersigned its proposal on sick-leave conversion is premised upon a decision by the County to stop paying employees for unused sick leave they had accumulated. Testimony at the hearing reflected that, for a number of years, employees who had

accumulated more than 120 days of unused sick leave, were paid each year for one-half of the amount in excess of 120 days, up to a maximum of six days.

Mr. Benz discussed the comparable data before him as follows:

Regarding the Union's proposal to convert sick leave earned, but not used, to vacation, the undersigned finds that Benton County permits conversion of 1¼ days of sick leave an employee earns, after the employee has accumulated 100 days of unused sick leave, to two hours of vacation. In Jasper County, employees who do not use sick leave "...during a three (3) month span..." receive "...one (1) bonus day...." In Mahaska County, after accumulating 80 days of sick leave, employees may receive up to two days off with pay. Marshall County also provides for conversion of sick leave to vacation for its secondary road employees. The remaining four counties in the Union's comparison group provide for differing forms of compensation for unused sick leave but do not convert it to vacation days.

Mr. Benz recommended as follows:

The undersigned recommends the 2003-2004 contract not include the Union's proposal to convert unused sick leave to additional vacation days. The comparison evidence does not clearly suggest the Union's proposal is in the norm. Four of the counties submitted for review by the Union have different provisions for unused sick leave than proposed by the Union.

More importantly, adding vacation days, when there are approximately thirty employees in the bargaining unit who might qualify for the additional days off, could become a problem for the County, in terms of completing the work in a timely fashion and in terms of scheduling the employees to do the work.

The evidence in this case shows that there is no consistency on this item, as shown by Union Exhibit 18 quoted above. The Undersigned notes that the Union has argued that this Arbitrator should select its proposal herein because it is identical to the recommendation of Fact-finder Michelstetter in the Sheriff Department Unit for 2003-04. On this argument I note that the Iowa Code, Section 20.22(3) does not provide for such an approach, *per se*, although evidence of internal comparables can be an "other relevant factor" Section 20.22(9) Iowa Code. The Undersigned is aware that the Michelstetter Award has been sent to arbitration.

On the other hand, it is significant that the County eliminated the historical wellness benefit in this unit (50% pay, up to six days each fiscal year after accumulation of more than 90 days sick leave) after employees voted in favor of the Union. Clearly,

unit employees must have relied upon the benefit before the County eliminated it in July of 2002. This historical evidence is an "other relevant factor" under Section 20.22(9) of the Code. In addition, the Undersigned notes that the Union offered herein to increase accumulated sick leave days needed to received the benefit to 120 days of sick leave, an increase from the historically set 90 day accumulation. Also, the County proffered no comparable data on this item.

Nonetheless, this Arbitrator must agree with Mr. Benz on this point, this benefit could become costly and difficult for the County to provide. 11/ The lack of consistent and compelling comparables weighs heavily against the Union's offer in this case, even in the face of the County's elimination of this historical benefit (albeit less rich than that offered herein) in 2002. In addition, this is the type of benefit which is normally voluntarily agreed upon in exchange for other items at the bargaining table. Therefore, the Fact-finder's recommendation is adopted herein. The Union's proposal on this point is again rejected.

Regarding the second issue - family and medical leave - on this item, the Undersigned's reading of the County's proposal is that the County (without consultation with the employee) will decide which types of leave (sick leave, vacation, compensatory time), and how much of each leave will be used, when the employee goes on a twelve-week family leave. This Arbitrator notes that the County again chose not to submit any comparables, and did not submit any exhibits in support of its position on this issue. Indeed, the County never addressed this issue during the instant hearing.

The Union has argued that the County's proposal conflicts with Federal law - the FMLA, Section 825.207(i), which clearly states that an employer may not require employees to substitute compensatory time for unpaid FMLA leave. This conflict, the Union urged, requires a conclusion that its offer (identical to Mr. Benz' recommendation) should be selected on this point.

Mr. Benz analyzed the comparables before him as follows:

Regarding the County's proposal on family medical leave, the undersigned observed references to such leave in only two of the contracts entered into evidence in this matter, those being the Jasper County and Mahaska County contracts. The current Jasper County contract provides, in relevant part, "...an employee who requests and is granted a leave of absence pursuant to the FMLA may use accrued leave (i.e. sick leave, vacation, compensatory time, bonus days) that the employee had accumulated..." The current Mahaska County contract merely states "...Employees will be eligible for Family and Medical Leave according to the provisions of the County policy...." See Union Exhibit No. 27. The Mahaska County policy in that regard was not offered into evidence.

Mr. Benz concluded as follows:

With respect to the family medical leave component of the sick-leave impasse item, the undersigned recommends the following be made part of the 2003-2004 contract:

Employees may elect to use earned sick leave, compensatory time or vacation as part of the twelve-week family leave.

While the record made by the parties does not establish a clear practice in the external comparisons offered, there is some internal comparability for the aforesaid provision, given the tentative agreement in the County's sheriff's department.

In this case, this Arbitrator notes that neither party discussed comparables on this point, so the Undersigned must assume that at best, the comparables before Mr. Benz remain unchanged. The parties failed to indicate what happened to the Sheriff Department tentative agreement on this point referred to by Mr. Benz given that, in the Sheriff's Department case, Fact-finder Michelstetter selected the Union's offer (identical to that before this Arbitrator) on this point.

Be that as it may, the conflict between the FMLA and the County's position, the grave difficulties that might arise for employees and their families if the County is granted *carte blanche* to select type and amount of leave (without any specific requirement to confer with or notify employees), the lack of evidence regarding the cost of this item to the County or the inconvenience if the County lacks the discretion to select the type and amount of leave to be used, make the selection of the Fact-finder's recommendation on this item the most reasonable.

Item 6 Job Classifications and Straight Time Hourly Wage Rates

As noted above, the County stipulated and agreed that the following language should appear in the 2003-04 labor agreement:

**ARTICLE 22 JOB CLASSIFICATIONS & STRAIGHT TIME
HOURLY WAGE RATES**

Reference is made here to Exhibit A, Job Classifications and Wage Rates. By this reference, said Exhibit becomes a part of this Agreement.

Employees shall be paid every two weeks.

The above provision shall therefore become a part of the 2003-04 collective bargaining agreement.

The Arbitrator now turns to the wage item, hotly contested by the parties herein. Initially, the Undersigned notes that, pursuant to the parties' stipulation, on January 24,

2003 the Iowa PERB "amended" the bargaining unit certification applicable to this case as follows:

INCLUDED: All employees of Poweshiek County Secondary Roads Department including Utility Worker I, II, and III, Mechanics I and II, Field Assistant, Shop Foremen, Transfer Station Superintendent.

EXCLUDED: County Engineer, Assistant to the County Engineer, Office Manager, Maintenance Superintendent and all others excluded by the Act.

This amendment did not change the original certification of the unit (Union 20).

The Union submitted lists of current employees and their rates of pay at the time of the instant hearing (Union 21). The County provided no evidence on this point and did not object to the Union's evidence. 12/ In sum, there are thirty unit employees, two are Utility I's and four are Utility III's, one is a Mechanic, one is a Field Assistant-in-training, one Transfer Station Superintendent, and nineteen are Utility II workers, and one Shop Foreman/Mechanic. The base rate of \$14.61 per hour. The County's Utility II position is the same as the comparables' Patrol Operator or Motorgrader position. In Poweshiek County there is no separate Heavy Equipment Operator position. Rather, Utility II workers receive \$0.10 per hour premium pay above the base rate for performing this work. In addition, the County Mechanics receive \$0.50 per hour over each employee's normal Utility II or III rate (\$14.61 or \$14.71 per hour, respectively) for this work.

It should be noted that the employees D. Brau, D. Taylor, R. Vanrenteghem and W. Johnston receive an additional \$0.50 per hour for mechanic duties, and that W. Johnston and J. Kriegel receive an additional \$1.00 for Shop Foreman duties. J. Kriegel receives an additional \$0.75 per hour for performing Assistant Road Superintendent duties. Finally, D. Zylstra receives an additional \$0.60 for painting duties.

The Union submitted Exhibit 22 which compared 2001-02 Utility II wage rates with Union comparable Patrol Operator rates, as follows:

	<u>2001-2002</u> <u>PATROL WAGES</u>	<u>\$/HOUR</u> <u>IN 2002</u>	<u>Percentage</u> <u>in 2002</u>	<u>2002-2003</u> <u>RATES</u>
BENTON	\$15.72	\$0.46	3.00%	\$16.18
IOWA	\$14.31	\$0.72	5.00%	\$15.03
JASPER	\$16.01	\$0.57	3.56%	\$16.58
KEOKUK	\$13.69	\$0.48	3.50%	\$14.17
MAHASKA	\$14.45	\$0.58	4.00%	\$15.03

MARION	Unorganized			\$15.53
MARSHALL	\$16.28	\$0.57	3.50%	\$16.85
TAMA	\$14.06	\$0.42	3.00%	\$14.48

AVERAGE	\$14.93	\$0.54	3.65%	\$15.48
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POWESHIEK	\$14.32	\$0.29	2.00%	\$14.61
DIFFERENCE				
FROM AVERAGE:	-\$0.61	-\$0.25	1.65%	-\$0.87

This Exhibit showed that Poweshiek Utility II's have been falling behind in wages; that County employees received a lower-than-average wage in 2002 and 2003 resulting in County Utility II's being behind the comparables in 2002-03 by \$0.87 per hour in wages since 2001. The Union also submitted an exhibit showing 2003-04 spendable earnings for comparable Patrol Operators and spendable earnings in 2003-04 for Utility II's if the County's offer, the Fact-finder's recommendation, or the Union's offer is awarded herein.

	<u>2003 PATROL WAGE RATES</u>	<u>HOURLY CONTRIBUTION TOWARD PREMIUMS</u>	<u>SPENDABLE EARNINGS</u>
BENTON	\$16.74	\$0.82	\$15.92
IOWA	OPEN	unknown	
JASPER	\$17.17	\$1.30	\$15.87
KEOKUK	\$14.60	\$0.72	\$13.88
MAHASKA	OPEN	\$0.40	
MARION	\$16.03	\$0.76	\$15.27
MARSHALL	\$17.27	\$0.58	\$16.69
TAMA	\$14.91	\$0.00	\$14.91
AVERAGE	\$16.21	\$0.65	\$15.56

POWESHIEK

UNION	\$15.05	\$1.30	\$13.75
\$0.44 across/board		(\$0.65 BEHIND)	\$1.81 Behind
COUNTY	\$14.90	\$1.44 plus 50% of increase	\$13.46

2% across/board

insurance increase unknown

at least \$2.10
Behind

FACT-FINDER	\$15.05	\$1.44	\$13.61
\$0.44 Across/Board	\$1.16 BEHIND	\$0.79 BEHIND	\$1.95 BEHIND

County Exhibit 24 (corrected at hearing) showed that among its list of thirteen counties the 2002 average wage rate for Motorgraders was \$14.80 per hour, or \$0.19 per hour more than current Poweshiek Utility II workers; that for this period the Heavy Equipment Operator average wage was \$14.84 compared to Poweshiek's \$14.71 per hour for this work; for Mechanic the average wage among the County's thirteen comparables was \$15.16 compared to Poweshiek's \$15.61 per hour

The Undersigned has studied and analyzed Mr. Benz' award on this item. There the County offer was as follows:

1. Job classifications and wage rates

	<u>07-01-02</u>	Increase by 2%
Utility Worker I	\$14.26	
Utility Worker II	\$14.61	
Utility Worker III	\$14.61	
Field Assistant	\$14.61	
Purchasing Agent	\$14.61	
Transfer Station Scale Operator	\$10.00	
Utility Worker I Blade Operator	\$13.51	
Lead Workers	+ \$0.20 per hour	

In the Fact-finding case, the parties advised that the Purchasing Agent, Transfer Station Scale Operator, and Utility Worker I Blade Operator Classifications shown above are not part of the bargaining unit. 13/ However, before Mr. Benz, the County's explanations demonstrated and Mr. Benz found that the County's actual offer at Fact-finding was as follows:

	Current Base Rate	2003-2004 Increase to Base
Utility Worker I	\$14.26	2%
Utility Worker II	\$14.61	2%
Utility Worker III	\$14.61	2%
Utility Worker III, Heavy Eq. Op.	\$14.71	2%
Utility Worker II, Mechanic	\$15.61	2%
Utility Worker III, Mechanic		
Lead Worker	\$15.61	2% increase to base + \$0.20 per hour
Utility Worker III, Bridge Crew		
Leader	\$14.61	2% increase to base + \$0.20 per hour
Field Assistant In Training	\$15.61	2%
Field Assistant	\$15.84	2%
Utility worker III, Transfer Station		
Superintendent	\$14.61	2% increase to base + \$0.20 per hour

Mr. Benz commented on the evidence regarding the County's wage offer as follows:

One final matter is necessary to the understanding of the County's proposal. Currently, in addition to his base wage of \$15.61, Bill Johnston, the mechanic/lead worker receives \$0.50 per hour for his duties as a shop foreman. His total current hourly pay is \$16.11. Currently, in addition to his base wage of \$14.61, Jeff Kriegel, the Bridge Crew Leader, receives \$1.00 per hour for his lead work on the bridge crew, \$0.50 per hour as a shop foreman, and \$0.25 per hour as an assistant road supervisor. His total current hourly pay is \$16.36. Currently, Dwaine Elliott, the Transfer Station Superintendent, in addition to his base wage of \$14.61, receives \$0.30 per hour for his duties as lead worker. His total current hourly pay is \$14.91. It is apparent, then, for the lead workers, the County's proposal would reduce the amounts the lead workers receive for their work as such. (emphasis supplied)

In the instant case, the County's offer 14/ (given to the Union on June 4, 2003) reads as follows:

Job Classifications	07-01-02	07-01-03
		Increase base pay by 2%
Utility I	\$14.11	
Utility II	\$14.61	
Utility III	\$14.71	
Mechanic I	\$15.61	
Mechanic II	\$15.61	
Field Assistant	\$15.84	
Field Assistant in training		
Shop Foreman		
(Johnston, Bill)	\$16.11	
(Kriegel, Jeff)	\$16.36	
Transfer Station Superintendent	\$14.91	
Lead Workers		+ \$0.20 over and above base pay

The Union objected to the County's changing its offer (before the Fact-finder) without any notice to the Union. The County argued that the changes it made for this instant arbitration were merely intended to correct prior mistakes and to clarify its position, not to substantively alter its position. The Union urged that the Undersigned cannot legally select the County's offer on this item as the County cannot legally amend its final offer in this fashion. However, this Arbitrator need not rule on the Union's objections regarding this point as after weighing, studying and analyzing the evidence herein, this Arbitrator finds the Union's offer on the wage item is the most reasonable.

This Arbitrator has selected the Union's offer (which is the same as the Fact-finder's recommendation) on the wage item for several reasons. As discussed above in detail, this Arbitrator finds the Union's comparables are in close geographic proximity to Poweshiek County and appear to have similar economic conditions and demographics based on their location near Iowa City and/or Des Moines and Interstate 80. The Union's eight-county group shows that the majority of County unit employees' wages are well below the average in 2003 of \$16.21 per hour and unit employees have lost ground significantly from 2001 (\$14.32 per hour) through 2003 (\$15.05 per hour) for a loss of \$1.89 over the period. There is no way that unit employees can recover from such losses (Union Exhibit 22). 15/

Second, regarding the overall cost picture in this case, specifically insurance costs (an "other relevant factor" on wages), the Undersigned notes that Mr. Benz recommended the Union's offer in his Award. Although Mr. Benz rejected the Union's attempt to recoup \$50/month per employee premium payments, the Undersigned notes that the Union has moderated this offer herein to \$50 per month per single plan employee and \$25 per month. In addition, the overwhelming Union comparables showed that \$0 premiums are paid by employees covered by a single health plan, and the County employees covered by the family plan pay substantially more than employees in comparable counties.

In addition, this Arbitrator notes that the County's tax asking was still pending before the State Appeal Board when Mr. Benz issued his award. As of the instant hearing, the County has won that case. Furthermore, as stated above, the County has the ability to levy taxes in both the General Fund and Rural Basic Fund, although it is not an easy proposition in these economic times.

Furthermore, the County's offer which includes substantial cuts to Johnston, Kriegel and Elliott which were voluntarily granted to these employees for additional assigned duties in the past, makes the County's offer unreasonable. Fact-finder Benz discussed the County's explanation for its offer to cut Johnston, Kriegel, and Elliott's pay as follows:

As explained to the undersigned at the hearing by the County's representative, the impetus for the County's proposal regarding lead-worker pay was the discovery by the County, at the time the determination of what classifications should be included in the bargaining unit was at issue, that the three lead workers were not "performing the duties the County thought they were being paid for." In essence, as understood by the undersigned, the County believed these workers were performing supervisory functions and thus their classifications were excludible from the bargaining unit. However, when called to explain their duties at the time the unit determination was being made, the three lead workers gave explanations of their duties which prevented their exclusion from the unit

and which led the County to conclude they really weren't performing duties additional to those of their regular job classification.

Two of the three lead workers affected by the County's proposal on lead worker pay testified at the fact-finding hearing. It is clear those two do not act as supervisors. They don't, for example, discipline, schedule work, or authorize leaves. It is also clear, however, they do have responsibilities beyond those of the regular job classifications. For example, on bridge or culvert projects, Jeff Kriegel decides what material the crew will use and how much and what equipment is necessary. At the job site, he decides how an area is to be prepared for construction, and leads the crew in getting the project completed. Generally, he has no supervisor present during such construction.

Bill Johnston, likewise, performs duties beyond those of the Mechanic classification. He is responsible for taking the time cards of employees and transferring the information to a diary for use by the County's Engineer. In the diary he notes what work an employee performed, notes the appropriate operation code and what machinery the employee used, and marks in it where the employee did the work. If an employee's time card does not show where the employee performed the work, he is responsible for seeing the employee does that. Additionally, he is on call at his home during the year, for the purpose of taking calls, and calling secondary road employees to do work that is necessary. An example of this, would be when there has been a motor vehicle accident. He is called and then determines who in the department should be called to assist in the matter.

Jeff Kriegel has been receiving additional pay as the shop foreman since 1993, the additional pay as bridge-crew leader since before 1997, and the additional pay as assistant road superintendent since 1997. All additional pay he receives was as a result of the recommendation of the road superintendent and/or Engineer. Bill Johnston has been receiving the additional pay accorded the shop foreman since 1996.

Mr. Benz then made the following findings on this issue:

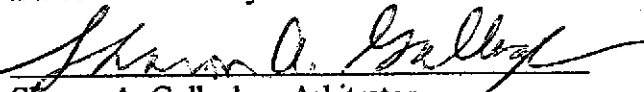
The recommendation of the undersigned on this impasse item does not change the additional pay the Shop Foreman and the Transfer State Superintendent have been receiving. The record made is insufficient in this Fact-finder's judgment, to recommend such a change. While there is no doubt the County's perception of what work these workers performed is different now than it was before the bargaining-unit determination, there is also no doubt at least two of the three workers have some additional job responsibilities. What is the value or worth of these additional responsibilities cannot be determined from the evidence the undersigned

received from the County. Such a change by this neutral would require more, such as a wage study or the like to recommend it, particularly given the fact the additional pay has been received by two of the three workers for more than five years and, at least in the case of one of them, was granted as a result of the recommendation of the County's Road Superintendent and/or Engineer.

This Arbitrator agrees with Mr. Benz' findings on this point and further observes that at the instant hearing the Undersigned was not persuaded by County Representative Herrera's explanation for the County's deep cuts to a few employees who for years have performed extra services for the County at its request thus obviating the necessity to hire additional employees. 16/ Without specific detailed evidence to support the County offer, there is insufficient basis on which to cut Kriegel, Johnston, and Elliott's pay so significantly. In this Arbitrator's view, the County's unsupported proposal to cut the pay of these employees weighs heavily against its offer on this item.

The County argued that Poweshiek County employees are not last in total compensation, or because all employees can neither be at the average or be at the top of the comparables, the Union's offer is unreasonable. The selection of the Union's offer on wages (3% or \$0.44 ATB) does not put unit employees at or even very close to the average of total compensation for the eight-county comparable group. In all of the circumstances, the Undersigned therefore finds the Union's offer on the wage item the most reasonable.

Dated this 15th day of June 2003


Sharon A. Gallagher, Arbitrator

Footnotes

- 1/ Two employees classified as Utility II and one employee classified as Utility III receive an additional \$0.50 per hour for partial mechanic duties. In addition, one employee classified as Utility II received an additional \$0.60 per hour for painting (body shop) duties. **That employee was terminated by the County between the Fact-finding and this Arbitration.**
- 2/ Here, Hours of Work and Overtime (including hours of work, overtime, and overtime for meetings and training), are included within one contract article (Article 13), but they comprise two separate impasse items under Iowa Law. Article 22, Job Classifications and Straight Time Hourly Wage Rates and Exhibit A, the salary schedule comprise one statutory impasse item. The Iowa Code requires the arbitrator to select the most reasonable position without alteration from among Union's position, the County's position, or the Fact-Finder's Recommendation, each in its entirety.
- 3/ At the June 4th hearing the County stipulated that it had no objection to including Article 22 (as quoted and offered by the Union herein) in the labor agreement. In addition, the County offered no evidence to the contrary.

- 4/ Bremer, Mahaska, Fayette, Washington, Buchanan, Jones, Hardin, Cedar, Tama, Floyd, Hamilton, Iowa and Butler. This includes Poweshiek
- 5/ The County admitted that it had no idea how much of the salaries listed was due to the longevity of the incumbents.
- 6/ The following footnote appeared as footnote 11 in the Benz Award:
- 11/ At the hearing, the undersigned asked the County's representative if the County was making an "inability-to-pay" argument with respect to the economic items. His response was "...unless we levy more taxes, yes...." While the undersigned understands that whether an employer is required to raise property taxes to fund a settlement is an important factor, it is not the only factor one must consider. The Iowa Legislature, in listing the other factors for consideration in Section 20.22(9) of the Code, did not indicate therein that any one factor must be given more weight than any other. To the undersigned, the fact that a list was set forth suggests that one should strive to determine what is reasonable after weighing all of the evidence.
- 7/ The record herein indicated that for at least four years prior to July of 2002 Poweshiek County Secondary Road employees were paid cash for overtime and compensation time if the employee chose cash and the County automatically paid employees for compensatory time accrued over forty hours.
- 8/ On rebuttal, the Union noted that Bremer and Hamilton Secondary Roads units are not unionized. The Union also submitted evidence to show that in Harrison County the employer pays 100% of the single premium plus giving these employees a tax-sheltered annuity of \$34.41 per month.
- 9/ Henry, Jackson, Cedar, Jones, Buena Vista, Hardin, Washington, Tama, Delaware, Mahaska, Iowa, Clayton. On rebuttal, the Union pointed out that Jackson and Henry Counties, where employees have the highest single premium payments, are non-unionized in Secondary Roads.
- 10/ The Union also pointed out that County Assessor's employees were not charged the \$50.00 per month employee contributions on the single plan after July 1, 2002, and that retired employees on the single plan were not charged for any single increase on and after July 1, 2002 (Union Exhibit 16); also, the Union pointed out that the County was likely not fully funding for potential family plan claims to the plan, based on the TPA's recommendations.
- 11/ The County's argument before Mr. Benz that the parties had tentatively agreed to a vacation provision prior to fact-finding has some force here.
- 12/ This Arbitrator notes that employees receive \$0.20 per hour longevity but that the rates used herein by the Union and the County did not include longevity.
- 13/ This is confirmed by PERB documents regarding the bargaining unit certification submitted by the Union herein. In addition, the Union noted that these positions no longer exist in the County.
- 14/ County Representative Herrera stated herein that the County's wage offer herein for the lead workers would mean their wages would be as follows:
Johnston: $\$14.71 * 1.02 + \0.20 (for lead) = \$15.20
Kriegel: $\$14.71 * 1.02 + \0.20 = \$15.20
Elliot: $\$14.61 * 1.02 + \0.20 = \$15.10
- 15/ Regarding the County's thirteen-county group, which this Arbitrator has already found to be lacking in sufficient basis to be found comparable herein, the Undersigned notes that the County offered only 2002 comparable wage rates for comparison, making the value of the data offered

questionable. In addition, for the reasons stated above, this Arbitrator has found the County's private sector comparables irrelevant and unreliable.

- 16/ Under the County's offer the Undersigned believes that employees Zylstra, Warden, Taylor and Brau could also lose money from their current rates.

CERTIFICATE OF SERVICE

I certify that on the 15th day of June, 20 03, I served the foregoing Award of Arbitrator upon each of the parties to this matter by (_____ personally delivering) (X mailing) a copy to them at their respective addresses as shown below:

I further certify that on the 15th day of June, 20 03, I will submit this Award for filing by (_____ personally delivering) (X mailing) it to the Iowa Public Employment Relations Board, 514 East Locust, Suite 202, Des Moines, IA 50309.

Sharon A. Gallagher

S.A. GALLAGHER Arbitrator
(Print name)

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